

(b) *Testing period may include a period beginning before January 1, 1997.* A testing period for purposes of §§ 1.1502-91T through 1.1502-96T and 1.1502-98T may include a period beginning before January 1, 1997. Thus, for example, in applying § 1.1502-92T(b)(1)(i) (relating to the determination of an ownership change of a loss group), the determination of the lowest percentage ownership interest of any 5-percent shareholder of the common parent during a testing period ending on a testing date occurring on or after January 1, 1997, takes into account the period beginning before January 1, 1997, except to the extent that the period is more than 3 years before the testing date or is otherwise before the beginning of the testing period. See § 1.1502-92T(b)(1).

(c) *Transition rules—(1) Methods permitted—(i) In general.* For the period ending before January 1, 1997, a consolidated group is permitted to use any method described in paragraph (c)(2) of this section which is consistently applied to determine if an ownership change occurred with respect to a consolidated net operating loss, a net operating loss carryover (including net operating loss carryovers arising in SRLYs), or a net unrealized built-in loss. If an ownership change occurred during that period, the group is also permitted to use any method described in paragraph (c)(2) of this section which is consistently applied to compute the amount of the section 382 limitation that applies to limit the use of taxable income in any post-change year ending before, on, or after January 1, 1997. The preceding sentence does not preclude the imposition of an additional, lesser limitation due to a subsequent ownership change nor, except as provided in paragraph (c)(1)(iii) of this section, does it permit the beginning of a new testing period for the loss group.

(ii) *Adjustments to offset excess limitation.* If an ownership change occurred during the period ending before January 1, 1997, and a method described in paragraph (c)(2) of this section was not used for a post-change year, the members (or group) must reduce the section 382 limitation for post-change years for which an income tax return is filed after January 1, 1997, to offset, as quickly as possible, the effects of any section 382 limitation that members took into account in excess of the amount that would have been allowable under §§ 1.1502-91T through 1.1502-96T and 1.1502-98T.

(iii) *Coordination with effective date.* Notwithstanding that a group may have used a method described in paragraph (c)(2)(ii) or (iii) of this section for the

period before January 1, 1997, §§ 1.1502-91T through 1.1502-96T and 1.1502-98T apply to any testing date occurring on or after January 1, 1997, for purposes of determining whether there is an ownership change with respect to any losses and, if so, the collateral consequences. Any ownership change of a member other than the common parent pursuant to a method described in paragraph (c)(2)(ii) or (iii) of this section does not cause a new testing period of the loss group to begin for purposes of applying § 1.1502-92T on or after January 1, 1997.

(2) *Permitted methods.* The methods described in this paragraph (c)(2) are:

(i) A method that does not materially differ from the rules in §§ 1.1502-91T through 1.1502-96T and 1.1502-98T (other than those in § 1.1502-95T(c) (relating to the apportionment of a section 382 limitation) as they would apply to a corporation that ceases to be a member of the group before January 1, 1997). As the context requires, the method must treat references to rules in current regulations as references to rules in regulations generally effective for taxable years before January 1, 1997. Thus, for example, the taxpayer must treat a reference to § 1.382-4(d) (relating to options) as a reference to § 1.382-2T(h)(4) for any testing date to which § 1.382-2T(h)(4) applies. Similarly, a reference to § 1.1502-21T(c) may be a reference to § 1.1502-21A(c), as appropriate. Furthermore, the method must treat all corporations that were affiliated on January 1, 1987, and continuously thereafter as having met the 5 consecutive year requirement of § 1.1502-91T(d)(2)(i) on any day before January 1, 1992, on which the determination of net unrealized built-in gain or loss of a loss subgroup is made;

(ii) A reasonable application of the rules in section 382 and the regulations thereunder applied to each member on a separate entity basis, treating each member's allocable part of a consolidated net operating loss which is attributable to it under § 1.1502-21T(b) as a net operating loss of that member and applying rules similar to § 1.382-8T to avoid duplication of value in computing the section 382 limitation for the member (see § 1.382-8T(h) (relating to the effective date and transition rules regarding controlled groups)); or

(iii) A method approved by the Commissioner upon application by the common parent.

(d) *Amended returns.* A group may file an amended return in connection with an ownership change occurring before January 1, 1997, to modify the amount of a section 382 limitation with respect to a consolidated net operating

loss, a net operating loss carryover (including net operating loss carryovers arising in SRLYs), or a recognized built-in loss (or gain) only if it files amended returns:

(1) For the earliest taxable year ending after December 31, 1986, in which it had an ownership change, if any, under § 1.1502-92T;

(2) For all subsequent taxable years for which returns have already been filed as of the date of the amended return;

(3) The modification with respect to all members for all taxable years ending in 1987 and thereafter complies with §§ 1.1502-91T through 1.1502-96T and 1.1502-98T; and

(4) The amended return(s) permitted by the applicable statute of limitations is/are filed before March 26, 1997.

(e) *Section 383.* This section also applies for the purposes of section 383, with appropriate adjustments to reflect that section 383 applies to credits and net capital losses.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * *				
(c) * * *				
CFR part or section where identified or described				Current OMB control No.
* * * *				*
1.1502-95T			1545-1218
* * * *				*

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: May 31, 1996.

Leslie Samuels,
Assistant Secretary of the Treasury.
[FR Doc. 96-15824 Filed 6-26-96; 8:45 am]
BILLING CODE 4830-01-U

26 CFR Parts 301 and 602

[TD 8680]

RIN 1545-AU41

Extensions of Time to Make Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning extensions of time for making certain elections under the Internal Revenue Code (Code). The regulations provide the standards that the Commissioner will use to grant taxpayers extensions of time for making these elections. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

DATES: These regulations are effective June 27, 1996.

For dates of applicability, see § 301.9100-1T(h) of these regulations.

FOR FURTHER INFORMATION CONTACT: Robert A. Testoff at (202) 622-4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1488. Responses to this collection of information are required to obtain an extension of time for making an election.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains temporary regulations amending the Regulations on Procedure and Administration (26

CFR part 301) concerning extensions of time for making certain elections. The regulations provide the standards that the Commissioner will use to grant taxpayers extensions of time for making these elections. These standards provide relief to taxpayers who reasonably and in good faith fail to make a timely election when granting relief will not prejudice the interests of the government. The regulations provide a means by which taxpayers can be in the same position they would have been in had they made their elections in a timely fashion.

Explanation of Provisions

These temporary regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election when the deadline for making the election is prescribed by regulation, revenue ruling, revenue procedure, notice, or announcement published in the Federal Register or the Internal Revenue Bulletin (regulatory election). Under section 6081(a), these regulations also provide an automatic extension of time to make an election when the deadline for making the election is prescribed by statute (statutory election) and the deadline for making the election is the due date of the return or the due date of the return including extensions. These regulations adopt and revise the standards for relief provided in Rev. Proc. 92-85, 1992-2 C.B. 490.

Automatic Extensions

Rev. Proc. 92-85 provides an automatic 12-month extension for certain regulatory elections listed in Appendix A of that revenue procedure. The temporary regulations continue the automatic 12-month extension and update the list of eligible regulatory elections.

Rev. Proc. 92-85 also provides an automatic 6-month extension for statutory elections when the deadline for making the election is prescribed as the due date of the return or the due date of the return including extensions. The temporary regulations expand the automatic 6-month extension to include regulatory elections.

Other Extensions

Rev. Proc. 92-85 provides relief for certain regulatory elections that do not qualify for relief under the automatic extensions. Rev. Proc. 92-85 requires a taxpayer to demonstrate that (1) it acted reasonably and in good faith and (2) granting relief will not prejudice the interests of the government. The temporary regulations continue to provide extensions for such regulatory

elections upon a showing of reasonable action and good faith and no prejudice to the interests of the government.

The temporary regulations adopt the standards for reasonable action and good faith in Rev. Proc. 92-85. The regulations provide that a taxpayer is deemed to have acted reasonably and in good faith if: (1) the taxpayer applies for relief before the failure to make the regulatory election is discovered by the IRS; (2) the taxpayer inadvertently failed to make the election because of intervening events beyond its control; (3) the taxpayer failed to make the election because after exercising reasonable diligence the taxpayer was unaware of the necessity for the election; (4) the taxpayer reasonably relied on written advice of the IRS; or (5) the taxpayer relied on a qualified tax professional, including a professional employed by the taxpayer, and the professional failed to make or advise the taxpayer to make the election. However, a taxpayer is deemed to have not acted reasonably and in good faith if: (1) the taxpayer is requesting relief for an election to alter a return position for which an accuracy-related penalty could have been imposed under section 6662; (2) the taxpayer was fully informed of the required election and related tax consequences and chose not to file the election; or (3) the taxpayer uses hindsight in requesting relief.

The temporary regulations adopt the standards for prejudice to the interests of the government in Rev. Proc. 92-85. The regulations provide that the interests of the government are deemed to be prejudiced if granting relief would result in a taxpayer having a lower tax liability than the taxpayer would have had if the regulatory election had been timely made. In addition, the interests of the government are ordinarily deemed to be prejudiced if the tax year in which the election should have been made or any affected tax years are closed by the statute of limitations.

Accounting Method and Period Elections

Rev. Proc. 92-85 provides limited relief (ordinarily not to exceed 90 days from the deadline for filing Form 3115, Application for Change in Accounting Method) for requests to change an accounting method subject to the procedure described in § 1.446-1(e)(3)(i) (requiring the advance written consent of the Commissioner). The temporary regulations continue this limited relief. Rev. Proc. 92-85 provides an automatic 12-month extension for the election to use the last-in, first-out (LIFO) inventory method under section 472 and also provides relief for the section 472

election beyond the automatic 12-month extension. Rev. Proc. 92-85 is otherwise inapplicable to accounting method regulatory elections, except for three specific elections listed in Appendix B of that revenue procedure.

The temporary regulations provide relief for all accounting method regulatory elections. For example, relief will now be available for elections under sections 197 (amortization of goodwill and certain other intangibles) and 468A (special rules for nuclear decommissioning costs).

The temporary regulations provide additional rules regarding what constitutes prejudice to the interests of the government for accounting method regulatory elections. The temporary regulations provide that the interests of the government are deemed to be prejudiced except in unusual and compelling circumstances if: (1) the election requires an adjustment under section 481(a); (2) the taxpayer is under examination, requests relief to change from an impermissible method of accounting, and granting relief will provide the taxpayer a more favorable method of accounting or more favorable terms and conditions than the taxpayer would receive if the change is made as part of the examination; or (3) the election provides a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year.

Rev. Proc. 92-85 provides an automatic 12-month extension for elections to use other than the required taxable year under section 444. Rev. Proc. 92-85 also provides limited relief (ordinarily not to exceed 90 days from the deadline for filing Form 1128, Application to Adopt, Change, or Retain a Tax Year) for accounting period regulatory elections subject to Rev. Proc. 87-32, 1987-2 C.B. 396. Rev. Proc. 92-85 is otherwise inapplicable to accounting period regulatory elections. The temporary regulations extend the limited relief for elections subject to Rev. Proc. 87-32 to all other accounting period regulatory elections except for the section 444 election, and provide relief for the section 444 election beyond the automatic 12-month extension.

Effect on Other Documents

Rev. Proc. 92-85, 1992-2 C.B. 490, as modified and clarified by Rev. Proc. 93-28, 1993-2 C.B. 344, is obsolete as of June 27, 1996.

Rev. Proc. 92-20, 1992-1 C.B. 685, is modified as of June 27, 1996 to the extent that the provisions of this regulation apply to applications for relief with respect to requests to change

an accounting method subject to the procedures of Rev. Proc. 92-20.

Rev. Proc. 87-32, 1987-2 C.B. 396, is modified as of June 27, 1996 to the extent that the provisions of this regulation apply to applications for relief with respect to requests to change an accounting period subject to the procedures of Rev. Proc. 87-32.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Robert A. Testoff of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 301.9100-1T also issued under 26 U.S.C. 6081;
Section 301.9100-2T also issued under 26 U.S.C. 6081;
Section 301.9100-3T also issued under 26 U.S.C. 6081; * * *

PAR. 2. Sections 301.9100-1T through 301.9100-3T are added to read as follows:

§ 301.9100-1T Extensions of time to make elections (temporary).

(a)-(c) [Reserved].

(d) *Introduction.* The regulations under this section and §§ 301.9100-2T through 301.9100-3T provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. The regulations under this section and §§ 301.9100-2T through 301.9100-3T also provide an automatic extension of time to make certain statutory elections. An extension of time is available for elections that a taxpayer is otherwise eligible to make and the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election. Section 301.9100-2T provides automatic extensions of time for making regulatory and statutory elections when the deadline for making the election is the due date of the return or the due date of the return including extensions. Section 301.9100-3T provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2T.

(e) *Terms.* The following terms have the meanings provided below:

Election includes an application for relief in respect of tax; a request to adopt, change, or retain an accounting method or accounting period; but does not include an application for an extension of time for filing a return under section 6081.

Regulatory election means an election whose deadline is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Statutory election means an election whose deadline is prescribed by statute.

Taxpayer means any person within the meaning of section 7701(a)(1).

(f) *General standards for relief.* The Commissioner in the Commissioner's discretion may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I, provided the taxpayer demonstrates to the satisfaction of the Commissioner that—

(1) The taxpayer acted reasonably and in good faith; and

(2) Granting relief will not prejudice the interests of the government.

(g) *Exceptions.* Notwithstanding the provisions of paragraph (f) of this section, an extension of time will not be granted—

(1) For elections under section 4980A(f)(5);

(2) For elections required to be made prior to November 20, 1970, in the case of an election—

(i) Required to be made in or with the taxpayer's original income tax return;

(ii) Required to be exercised by filing a claim for credit or refund, unless the election is required to be exercised on or before a date that precedes the date of expiration of the period of limitations provided in section 6511;

(iii) Required to be filed in a petition to the Tax Court;

(iv) To change a previous election;

(v) To change an accounting method as described in §§ 1.77-1 of this chapter and 1.446-1 of this chapter;

(vi) To change an accounting period as described in § 1.442-1 of this chapter; or

(vii) To change the method of treating bad debts as described in § 1.166-1 of this chapter; or

(3) For elections that are expressly excepted from relief or where alternative relief is provided by a statute, a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

(h) *Effective dates.* In general, this section and §§ 301.9100-2T through 301.9100-3T are effective for all requests for relief being considered by the IRS on June 27, 1996 and for all requests for relief submitted on or after June 27, 1996. However, the automatic 12-month extension and the automatic 6-month extension provided in § 301.9100-2T are effective for elections whose due dates are on or after June 27, 1996.

§ 301.9100-2T Automatic extensions (temporary).

(a) *Automatic 12-month extension—*
(1) *In general.* An automatic extension of 12 months from the original deadline for making a regulatory election is granted to make elections described in paragraph (a)(2) of this section provided the taxpayer takes corrective action as defined in paragraph (c) of this section within that 12-month extension period.

(2) *Elections eligible for automatic 12-month extension.* The following regulatory elections are eligible for the automatic 12-month extension described in paragraph (a)(1) of this section—

(i) The election to use other than the required taxable year under section 444;

(ii) The election to use the last-in, first-out (LIFO) inventory method under section 472;

(iii) The 15-month rule for filing an exemption application for a section 501(c)(9), 501(c)(17), or 501(c)(20) organization under section 505;

(iv) The 15-month rule for filing an exemption application for a section 501(c)(3) organization under section 508;

(v) The election to be treated as a homeowners association under section 528;

(vi) The election to adjust basis on partnership transfers and distributions under section 754;

(vii) The estate tax election to specially value qualified real property (where the IRS has not yet begun an examination of the filed return) under section 2032A(d)(1);

(viii) The chapter 14 gift tax election to treat a qualified payment right as other than a qualified payment under section 2701(c)(3)(C)(i); and

(ix) The chapter 14 gift tax election to treat any distribution right as a qualified payment under section 2701(c)(3)(C)(ii).

(b) *Automatic 6-month extension.* An automatic extension of 6 months from the due date of a return excluding extensions is granted to make regulatory or statutory elections whose deadlines are prescribed as the due date of the return or the due date of the return including extensions in the case of a taxpayer that timely filed its return for the year the election should have been made, provided the taxpayer takes corrective action as defined in paragraph (c) of this section within that 6-month extension period. This extension does not apply, however, to regulatory or statutory elections that must be made by the due date of the return excluding extensions.

(c) *Corrective action.* For purposes of this section, *corrective action* means filing an original or an amended return for the year the regulatory or statutory election should have been made and attaching the appropriate form or statement for making the election. For those elections not required to be filed with a return, corrective action means taking the steps required to file the election in accordance with the statute, the regulation published in the Federal Register, or the revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Taxpayers who make an election under an automatic extension (and all taxpayers whose tax liability would be affected by the election) must report their income in a manner that is consistent with the election and comply with all other requirements for making

the election for the year the election should have been made and for all affected years; otherwise, the Service may invalidate the election.

(d) *Procedural requirements.* Any return, statement of election, or other form of filing that must be made to obtain an automatic extension must provide the following statement at the top of the document: "FILED PURSUANT TO § 301.9100-2T". Any filing made to obtain an automatic extension must be sent to the same address that the filing to make the election would have been sent had the filing been timely made. No request for a letter ruling is required to obtain an automatic extension. Accordingly, user fees do not apply to taxpayers taking corrective action to obtain an automatic extension.

(e) The following example illustrates the rules of this section:

Example. Taxpayer A fails to make a certain election when filing A's 1996 income tax return on March 17, 1997, the due date of the return. This election does not affect the tax liability of any other taxpayer. The applicable regulation requires that the election be made by attaching the appropriate form to a timely filed return including extensions. In accordance with paragraphs (b) and (c) of this section, A may make the regulatory election by filing an amended return with the appropriate form by September 15, 1997 (6 months from the March 17, 1997, due date).

§ 301.9100-3T Other extensions (temporary).

(a) *In general.* Requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2T must be made under the rules of this section. Requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in paragraph (e) of this section) to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

(b) *Reasonable action and good faith—*(1) *In general.* Except as provided in paragraphs (b)(3)(i) through (iii) of this section, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—

(i) Requests relief under this section before the failure to make the regulatory election is discovered by the IRS;

(ii) Inadvertently failed to make the election because of intervening events beyond the taxpayer's control;

(iii) Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the

taxpayer was unaware of the necessity for the election;

(iv) Reasonably relied on the written advice of the IRS; or

(v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

(2) *Reasonable reliance on a qualified tax professional.* For purposes of this paragraph (b), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not—

(i) Competent to render advice on the regulatory election; or

(ii) Aware of all relevant facts.

(3) *Taxpayer deemed to have not acted reasonably or in good faith.* For purposes of this paragraph (b), a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer—

(i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) of this chapter and the new position requires or permits a regulatory election for which relief is requested;

(ii) Was fully informed of the required election and related tax consequences, but chose not to file the election; or

(iii) Uses hindsight in requesting relief. If specific facts have changed since the original deadline for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

(c) *Prejudice to the interests of the government—(1) In general—(i) Lower tax liability.* The interests of the government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

(ii) *Closed years.* The interests of the government are ordinarily prejudiced if the tax year in which the regulatory election should have been made or any tax years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. The IRS may condition a grant of relief on the taxpayer providing the IRS with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to paragraph (e)(3) of this section) certifying that the requirements of paragraph (c)(1)(i) of this section are satisfied.

(2) *Special rules for accounting method regulatory elections.* The interests of the government are deemed to be prejudiced except in unusual and compelling circumstances if the accounting method regulatory election is—

(i) Subject to the procedure described in § 1.446-1(e)(3)(i) of this chapter (requiring the advance written consent of the Commissioner), and the request for relief under this section is filed more than 90 days after the deadline for filing the Form 3115, Application for Change in Accounting Method;

(ii) Not an election described in paragraph (c)(2)(i) of this section and requires an adjustment under section 481(a) (or would require an adjustment under section 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable year the election should have been made);

(iii) Not an election described in paragraph (c)(2)(i) of this section, the taxpayer is under examination and requests relief under this section to change from an impermissible method of accounting, and granting relief will provide the taxpayer a more favorable method of accounting or more favorable terms and conditions than the taxpayer would receive if the change from the impermissible method is made as part of the examination; or

(iv) Not an election described in paragraph (c)(2)(i) of this section and the election provides a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year.

(3) *Special rules for accounting period regulatory elections.* The interests of the government are deemed to be prejudiced except in unusual and compelling circumstances if an election is an accounting period regulatory election (other than the election to use other than the required taxable year under section 444) and the request for

relief is filed more than 90 days after the deadline for filing the Form 1128, Application to Adopt, Change, or Retain a Tax Year (or other required statement).

(d) *Effect of amended returns—(1) Second examination under section 7605(b).* Taxpayers requesting and receiving an extension of time under this section waive any objections to a second examination under section 7605(b) for the issue(s) that is the subject of the relief request and any correlative adjustments.

(2) *Suspension of the period of limitations under section 6501(a).* A request for relief under this section does not suspend the period of limitations on assessment under section 6501(a). Thus, for relief to be granted, the IRS may require the taxpayer to consent under section 6501(c)(4) to an extension of the period of limitations on assessment for the tax year in which the regulatory election should have been made and any tax years that would have been affected by the election had it been timely made.

(e) *Procedural requirements—(1) In general.* Requests for relief under this section must provide evidence that satisfies the requirements in paragraphs (b) and (c) of this section, and must provide additional information as required by this paragraph (e).

(2) *Affidavit and declaration from taxpayer.* The taxpayer, or the individual who acts on behalf of the taxpayer with respect to tax matters, must submit a detailed affidavit describing the events that led to the failure to make a valid regulatory election and to the discovery of the failure. When the taxpayer relied on a qualified tax professional for advice, the taxpayer's affidavit must describe the engagement and responsibilities of the professional as well as the extent to which the taxpayer relied on the professional. The affidavit must be accompanied by a dated declaration, signed by the taxpayer, which states: "Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented herein are true, correct, and complete." The individual who signs for an entity must have personal knowledge of the facts and circumstances at issue.

(3) *Affidavits and declarations from other parties.* The taxpayer must submit detailed affidavits from the individuals having knowledge or information about the events that led to the failure to make a valid regulatory election and to the discovery of the failure. These individuals must include the taxpayer's income tax return preparer, any individual (including an employee of the taxpayer) who made a substantial

contribution to the preparation of the return, and any accountant or attorney, knowledgeable in tax matters, who advised the taxpayer with regard to the election. An affidavit must describe the engagement and responsibilities of the individual as well as the advice that the individual provided to the taxpayer. Each affidavit must include the name, current address, and taxpayer identification number of the individual, and be accompanied by a dated declaration, signed by the individual, which states: "Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented herein are true, correct, and complete."

(4) *Other Information.* The request for relief filed under this section must also contain the following information—

(i) The taxpayer must state whether the taxpayer's return(s) for the tax year in which the regulatory election should have been made or any tax years that would have been affected by the election had it been timely made is being examined by a district director, or is being considered by an appeals office or a federal court. The taxpayer must notify the IRS office considering the request for relief if the IRS starts an examination of any such return while the taxpayer's request for relief is pending;

(ii) The taxpayer must state when the applicable return, form, or statement used to make the election was required to be filed and when it was actually filed;

(iii) The taxpayer must submit a copy of any documents that refer to the election;

(iv) When requested, the taxpayer must submit a copy of the taxpayer's income tax return for any taxable year for which the taxpayer requests an extension and any return affected by the election; and

(v) When applicable, the taxpayer must submit a copy of the income tax returns of other taxpayers affected by the election.

(5) *Filing instructions.* A request for relief under this section is a request for a letter ruling. Requests for relief should be submitted in accordance with the applicable procedures for requests for a letter ruling and must be accompanied by the applicable user fee.

(f) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Taxpayer discovers own error. Taxpayer A prepares A's 1996 income tax return. A is unaware that a particular regulatory election is available to report a transaction in a particular manner. A files the 1996 return without making the election and reporting the transaction in a different

manner. In 1998, A hires a qualified tax professional to prepare A's 1998 return. The professional discovers that A did not make the election. A promptly files for relief in accordance with this section. Assuming paragraphs (b)(3)(i) through (iii) of this section do not apply, A is deemed to have acted reasonably and in good faith.

Example 2. Reliance on qualified tax professional. Taxpayer B hires a qualified tax professional to advise B on preparing B's 1996 income tax return and provides the professional with all the information requested. The professional fails to advise B that a regulatory election is necessary in order for B to report income on B's 1996 return in a particular manner. Nevertheless, B reports this income in a manner that is consistent with having made the election. In 1999, during the examination of the 1996 return by the IRS, the examining agent discovers that the election has not been filed. B promptly files for relief in accordance with this section, including attaching an affidavit from B's professional stating that the professional failed to advise B that the election was necessary. Assuming paragraphs (b)(3)(i) through (iii) of this section do not apply, B is deemed to have acted reasonably and in good faith.

Example 3. Accuracy-related penalty. Taxpayer C reports income on its 1996 income tax return in a manner that contravenes a statutory provision. C was aware of the statutory provision that prohibited the manner in which C reported this income, but did not provide adequate disclosure of the return position within the meaning of § 1.6662-3(c) of this chapter. In 1999, during the examination of the 1996 return, the IRS raises an issue regarding the reporting of this income on C's return. C requests relief under this section to elect an alternative method of reporting the income. Under paragraph (b)(3)(i) of this section, C is deemed to have not acted reasonably and in good faith because C seeks to alter a return position for which an accuracy-related penalty could be imposed under section 6662.

Example 4. Election not requiring adjustment under section 481(a). Taxpayer D prepares D's 1996 income tax return. D is unaware that a particular accounting method regulatory election is available. D files the 1996 return using another method of accounting. In 1998, D hires a qualified tax professional to prepare D's 1998 return. The professional discovers that D did not make the election. D promptly files for relief in accordance with this section. Assume the applicable regulation provides that the election does not require an adjustment under section 481(a) and the election is not subject to the procedure described in § 1.446-1(e)(3)(i) of this chapter. Further assume that if D were granted an extension of time to make the election, D would pay no less tax than if the election had been timely made. Under paragraph (c) of this section, the interests of the government are not deemed to be prejudiced.

Example 5. Election requiring adjustment under section 481(a). The facts are the same as in Example 4 of this paragraph (f) except that the applicable regulation provides that

the election requires an adjustment under section 481(a). Under paragraph (c)(2)(ii) of this section, the interests of the government are deemed to be prejudiced except in unusual or compelling circumstances.

Example 6. Under examination. A regulation permits an automatic change from an impermissible method of accounting on a cut-off basis. Any change to this method made as part of an examination is made with a section 481(a) adjustment. Taxpayer E reports income on E's 1996 income tax return using the impermissible method of accounting. In 1999, during the examination of the 1996 return by the IRS, the examining agent questions the propriety of E's method of accounting. E requests relief under this section to make the change pursuant to the regulation for 1996. E will receive less favorable terms and conditions if the change in method of accounting is made with a section 481(a) adjustment by the examining agent than if the change is made on a cut-off basis pursuant to the regulation. Under paragraph (c)(2)(iii) of this section, the interests of the government are deemed to be prejudiced except in unusual and compelling circumstances

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by adding the following entries in numerical order to the table:

§ 602.101 OMB Control numbers

* * * * *

(c) * * *

CFR part or section where identified and described					Current OMB control number
*	*	*	*	*	*
§ 301.9100-2T				1545-1488
§ 301.9100-3T				1545-1488
*	*	*	*	*	*

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved:

Donald C. Lubick,
Assistant Secretary of the Treasury.
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